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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Local Exchange Carriers' Rates,	)	CC Docket No. 94-97
Terms, and Conditions for	)	Phase I
Expanded Interconnection Through	)	
Virtual Collocation for	)	
Special Access	)	
and Switched Transport	)	

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OPPOSITION TO DIRECT CASES

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SUMMARY

Several local exchange carriers ("LECs") have refused to provide cost data expressly required by the Commission: Bell Atlantic admits that its maintenance costs are overstated, and promises to file revised tariffs in two months; while Southwestern Bell and Cincinnati Bell argue that their data -- the same data provided by every other LEC -- are proprietary and cannot be disclosed to the public. These actions are transparent attempts to game the regulatory process and to deny interested parties and the Commission information that is critical to a responsible review of the interconnection rates and charges. The Commission should impose the maximum forfeiture permitted under Section 503(b)(1)(B) of the Communications Act on Bell Atlantic for failure to comply with the Commission's orders, and should prescribe virtual interconnection rates for Southwestern Bell and Cincinnati Bell based on data available in the public record.

The LEC direct cases fail to justify the overhead loading factors used to establish virtual interconnection rates and charges. The FCC's decision to prohibit LEC discrimination in the application of overheads is fair and reasonable -- absent such restriction, LECs could force captive interconnectors to bear a greater overhead burden than the LECs' preferred customers, thereby forcing interconnected competitors to subsidize the LECs' competitive services.

For purposes of the Commission's investigation, any LEC service against which interconnected parties compete should be deemed "comparable" to virtual interconnection. A review of such LEC services -- including fiber ring services and special access and switched transport services offered through volume and term discounted rate

structures -- discloses that the LECs are discriminating in their application of overhead loadings in order to disadvantage interconnected competitors. Specifically, recent LEC tariff filings disclose that the rates for comparable services reflect lower overhead loadings and rate/cost ratios than the rates for virtual interconnection. In order to prevent unreasonable and anticompetitve discrimination, the Commission should prescribe rates for the LECs' virtual interconnection services that are consistent with the loadings and ratios disclosed in these tariff filings.

The Commission should clarify that LEC promotional offerings will also be considered comparable to interconnection. If such promotions involve waiver of installation charges, the LECs should waive nonrecurring charges for interconnection cross-connects during the promotional period. If the promotion involves reduced rates, the Commission can evaluate their reasonableness through the normal tariff review process.

Finally, the Commission should proscribe the LEC practice of recovering overheads from nonrecurring interconnection charges. This practice is unreasonably discriminatory because most LECs to not apply such overheads to their nonrecurring charges for other services. Moreover, this practice unreasonably inflates the cost of interconnection.

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MFS COMMUNICATIONS COMPANY, INC.
OPPOSITION TO DIRECT CASES

MFS Communications Company, Inc. ("MFS"), by its undersigned counsel and pursuant to the Commission's *Designation Order*,[1] hereby respectfully submits its Opposition to the Direct Cases filed by the Local Exchange Carriers ("LECs") in response to the Commission's directive.

I. INTRODUCTION

As MFS has demonstrated in prior filings in the instant proceeding and in CC Docket No. 91-141, the LECs have employed overstated investment and excessive overhead loadings in an attempt to impose unreasonable and excessive rates on parties seeking bottleneck expanded interconnection services. MFS commends the Commission for requiring the detailed cost data ordered in the *Designation Order* -- the data contained in the LECs' direct cases adds critically important information to the public record, and is essential to a

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[1] *Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport*, Order Designating Issues for Investigation, CC Docket No. 94-97, DA 95-374 (released February 28, 1995) (*Designation Order*).

responsible analysis of the LECs' rates. Several LECs have, however, refused to provide the data required by the Commission in an apparent attempt to prevent reasoned analysis of their rates and charges. Despite these attempts to evade the Commission's requirements, the data that have been submitted demonstrate that, for the LECs' virtual interconnection rates to be just and reasonable, substantial additional reductions are required. MFS discusses these issues in detail below.

II. THE FLAGRANT REFUSAL OF SOME LECS TO PROVIDE THE COST DATA EXPRESSLY REQUIRED BY THE COMMISSION MERITS IMPOSITION OF SANCTIONS AND COMPELS PRESCRIPTION OF RATES BASED UPON THE PUBLIC RECORD

Despite the Commission's explicit direction that LECs provide the detailed cost data necessary to evaluate the reasonableness of their virtual interconnection rates and charges, several LECs have withheld the required data from the Commission and/or interested parties. Of these, the most egregious example is provided by Southwestern Bell, which argues that data regarding its direct investment and its overhead loadings is confidential information that may not be released to the public. Southwestern Bell's Direct Case continues this tactic, which initially was used to shield from public scrutiny the data required by the Commission in its *TRP Order.*[2]

By demanding proprietary treatment for this data, and by contesting Freedom of Information Act ("FOIA") requests filed by MFS and other parties to obtain such data --

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[2] *Commission Requirements for Cost Support Material To Be Filed with Virtual Collocation Tariffs for Special Access and Switched Transport*, 9 FCC Rcd 5679 (1994)(*TRP Order*).

even subject to a nondisclosure agreement -- Southwestern Bell effectively has diverted already scarce Commission resources to its failure to provide required data. This is particularly harmful to the public interest given the tight deadline within which the Commission must complete its analysis of all of the LECs' virtual collocation rates, terms and conditions.[3/] As a result of this diversionary tactic, Southwestern Bell has bottled up its initial cost data in FOIA proceedings before the Commission that have lasted four months. Moreover, given the statutory deadline for completing the investigation of the LECs' virtual interconnection rates, there is little chance that, even if FOIA requests are filed,[4/] the data contained in Southwestern Bell's March 21 Direct Case can be made public with adequate time for interested parties to review and comment on it.[5/] Apparently hoping to cause the

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3/ Southwestern Bell's refusal to provide cost data to interested parties in the Commission's tariff review process is merely one part of a concerted and ongoing effort to disadvantage aspiring competitors by gaming the regulatory process. In Texas, for example, the Public Utility Commission ordered Southwestern Bell to file a state expanded interconnection tariff that mirrored its federal tariff. The Texas Commission did, however allow Southwestern Bell to establish different rates to reflect unique intrastate cost factors. Southwestern Bell replied by filing a tariff with recurring rates that are even higher than the rates filed in Southwestern Bell's federal tariff. Texas PUC Docket No. 12879 -- *Application of Southwestern Bell Telephone Company for Expanded Interconnection and Unbundling of Special Access DS1 and DS3 Services*, filed December 30, 1994. The fact that these rates are patently excessive and wholly insupportable is beside the point -- Southwestern Bell has succeeded in forcing the Texas Commission and interested parties to initiate a full rate proceeding that likely will not be resolved for six-to-twelve months. In the meantime, Southwestern Bell's proposed rates are so grossly excessive that no interconnector can afford to establish an intrastate interconnection arrangement. By so gaming the regulatory process in Texas -- just as it is doing before this Commission -- Southwestern Bell has succeeded in delaying expanded interconnection for months.

4/ MFS plans to file a FOIA request seeking access to the March 21 cost data -- under a protective order, if required -- in the near future.

5/ Of course, Southwestern Bell's transparent attempt to game the regulatory process could be circumvented if the Commission were to expedite the processing of all FOIA requests currently pending, and soon to be filed. As one of the parties that is prosecuting the same diversionary delay, Cincinnati Bell has joined Southwestern Bell in asking the Commission for proprietary treatment of its cost data.

Bell Atlantic has taken a more direct approach -- it has simply refused to provide the cost data expressly ordered by the Commission. Faced with data provided by MFS and others demonstrating that Bell Atlantic overstated its rates by, *inter alia*, inflating its maintenance costs, Bell Atlantic has admitted that its costs are "significantly lower than those upon which the rates in the original tariff were based."[6] Rather than provide the original data that have been used to compute the currently effective rates -- as expressly required by the Commission -- Bell Atlantic now states that it will file a new tariff and new data in June.

While MFS welcomes this admission, it does not excuse Bell Atlantic from its obligation to comply with a direct order of the Commission. By withholding the cost data that were used to establish the initial rates, Bell Atlantic arrogates to itself additional time to "cook the books" and obfuscate the cost and rate relationships that appeared in its initial filing. As a result of Bell Atlantic's refusal to provide the original cost data -- detailed as per the Commission's instruction -- the Commission and interested parties may be denied access to data critical to the evaluation of the reasonableness of Bell Atlantic's promised new rates. Rather than simply provide new data in its June filing, Bell Atlantic should be

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FOIA requests, MFS strongly urges the Commission to complete the FOIA review process and release the Southwestern Bell data as soon as possible.

[6] Bell Atlantic at 1-2.

required to provide the detailed data relating to its initial filings, and should be required to explain why those data are incorrect in its subsequent filing.

Moreover, Bell Atlantic's offer to "voluntarily" keep its current, Commission-adjusted rates in effect past the five month investigation deadline should be rejected. Such action would merely permit Bell Atlantic to impose admittedly excessive rates and charges upon captive interconnectors beyond the completion of the Commission's investigation.

The actions by Southwestern Bell, Cincinnati Bell and Bell Atlantic all game the regulatory process in a transparent attempt to perpetuate unreasonable rates and charges and to frustrate the Commission's expanded interconnection policy. These actions make a mockery of the tariff review process, slow the introduction of competitive alternatives to consumers, penalize the LECs' competitors, and severely erode the Commission's credibility. In the face of this intransigence MFS urges the Commission to take strong and decisive action: For Southwestern Bell and Cincinnati Bell, the Commission should prescribe interconnection rates based on the lowest overhead loading and cost/rate ratio data available on the public record. The Commission should also complete the processing of all related FOIA requests as soon as practicable. For Bell Atlantic, the Commission should find the LEC in willful violation of an express Commission order, pursuant to Section 503(b)(1)(B) of the Communications Act, and should impose the maximum permissible forfeiture of $100,000 for each violation. The Commission should also order Bell Atlantic to file the detailed cost data from its original cost studies immediately.

III. THE LEC DIRECT CASES FAIL TO JUSTIFY THE OVERHEAD LOADING FACTORS USED TO ESTABLISH RATES AND CHARGES FOR VIRTUAL EXPANDED INTERCONNECTION

Predictably, most LECs challenge the Commission's analytical methods, and protest the Commission's action that effected interim reductions in most of the LECs' virtual interconnection rates and charges. As MFS discusses below, the Commissions' analysis is fully supported by economic theory and public policy considerations, and will yield fair and reasonable rates.

1. The Commission's Proscription of Discriminatory Overhead Loadings Reflects Sound Economic Theory and Public Policy, and Must Be Enforced

Following the Commission's initial review of the LECs' virtual interconnection tariffs the Commission observed: "It appears that LECs tend to assign low overheads in markets where they face actual or potential competition from interconnectors and assign high overheads where they do not."[7] The Commission has clearly stated its position that continuation of such pricing practices would frustrate the Commission's policy of promoting competition through virtual interconnection.[8]

This practice is particularly harmful when applied to pricing for virtual interconnection. In this instance, LECs have the opportunity to shift common overheads from competitive services to bottleneck interconnection services that must be purchased by their competitors. In so doing, they effectively subsidize their competitive service rates while inflating the costs of expanded interconnection borne by their competitors. In their

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[7] *Ameritech Operating Companies*, CC Docket No. 94-97, DA 94-1421 (released December 9, 1994), at ¶ 21.

[8] *Id.* at ¶ 22.

initial virtual interconnection filings, the LECs demonstrated both the incentive and the ability to engage in such anticompetitive pricing behavior.

BellSouth attempts to raise several procedural and policy arguments against the Commission's investigation, arguing that the FCC's focus on overhead loadings for disaggregated cost elements is unprecedented and unreasonable.[9] The LEC argues that a Commission-imposed prohibition of discrimination in the application of overhead loadings would place BellSouth at a competitive disadvantage.[10] BellSouth also concludes that its proposed virtual collocation charges fall within the "range of reasonableness" and so are uncontestable.[11]

BellSouth offers no support for its arguments against the Commission's analytical methods, and no support is available. To argue that the Communications Act prohibits unreasonable discrimination in rates, but not in individual cost elements is both unfounded and nonsensical. Similarly, BellSouth's allusion to a "range of reasonableness" is wholly inapposite to the instant issue: the Commission has never found any portion of the LECs' virtual interconnection rates to be reasonable, and has never defined a range of reasonableness for them. Indeed, when partially suspending the rates of most of the LECs and initiating the instant investigation, the Commission noted that the overhead loadings used by the LECs appeared to be unreasonable.[12] The Commission's actions to date in the

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9/ BellSouth at 3-4.

10/ *Id.* at 5.

11/ *Id.* at 6.

12/ DA 94-1421 at ¶ 24.

investigation of the LEC virtual interconnection rates have been fully consistent with prior Commission practice, and with the dictates of the Communications Act.

Finally, Southwestern Bell argues that the record in the instant proceeding contained no notice and comment on the appropriate level of overheads, and contends that the Commission's action is therefore arbitrary and capricious.[13] Southwestern Bell's argument is specious. When Southwestern Bell and other LECs filed their initial virtual interconnection tariffs, MFS filed an opposition specifically challenging the LECs' use of overhead loadings.[14] Southwestern Bell therefore had actual notice that the discriminatory application of overhead loadings was at issue. Neither Southwestern Bell nor BellSouth raise any credible substantive or procedural arguments against the method of analysis used by the Commission in the instant investigation.

2. *LEC Attempts to Exclude Relevant Competitive Services From the Definition of "Comparable" Services Unreasonably Inflate the Costs of Interconnection and Must Be Rejected*

The *Designation Order* required LECs to identify both unit investment amounts and disaggregated annual cost data for DS1 and DS3 virtual collocation services, and for "comparable" DS1 and DS3 services with the lowest overheads.[15] In requesting these data, the Commission noted that, "to the extent virtual collocation facilities are similar

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[13] Southwestern Bell at 3.

[14] MFS Communications Company, Inc. Petition for Partial Rejection or Suspension and Investigation, and for Prescription of Tariffed Rates, Terms and Conditions, filed in CC Docket No. 91-141, in opposition Southwestern Bell Tariff F.C.C. No. 73, Transmittals No. 2382 and 2383, on October 14, 1994.

[15] DA 95-374 at ¶ 17(b).

to the comparable service facilities, LECs should use the same unit investment components and annual cost factors for both of these services."[16]

A. Ameritech

Ameritech argues that the Commission's investigation focuses on a "price squeeze" analysis, but contends that no price squeeze exists as long as competitive and collocation services are priced above cost and make proportionately equivalent contribution to corporate costs.[17] In so arguing, however, Ameritech fails to recognize that LECs have enormous capacity under the Price Cap rules to target major rate reductions to the service elements and to the geographic areas where they face competition. This level of flexibility empowers LECs to remove the overhead from selected cost elements almost at will. For this reason, the Commission's focus on the discriminatory application of overheads at the rate element level is the only reasonable means of ensuring that interconnected competitors will not bear a greater overhead burden than preferred LEC customers.

Recent filings by Ameritech provide a case in point. Ameritech states in its Direct Case that its overheads are applied consistently to interconnection and competitive services.[18] In fact, the Tariff Review Plan submitted by Ameritech does list fairly consistent rate/cost ratios of 1.65, 1.58 and 1.46.[19] Recently, however, Ameritech has filed several tariff revisions introducing new rates for competitive services that reflect

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[16] *Id*. at ¶ 16.

[17] Ameritech at 7-8.

[18] Ameritech at 3.

[19] Ameritech at Attachment V.

significantly different ratios. In Transmittal No. 863,[20] Ameritech introduces new term discounts for its high capacity special access services, displaying rate/cost ratios of 1.43, and 1.15.[21] Similarly, in Transmittal No. 856,[22] Ameritech introduces an OC-12 site diversity option, with a rate/cost ratio of 1.02.[23] These filings indicate that Ameritech is shifting a portion of the overhead burden from its most competitive services to interconnected competitors. It is precisely this practice that the Commission's discrimination analysis is designed to prevent. The Commission should therefore prescribe changes in Ameritech's interconnection rates to bring them in line with Ameritech's competitive offerings.

B. Bell Atlantic

Bell Atlantic states that it uses averaged overhead loading factors derived from ARMIS reports at the request of the Commission Staff, and argues that such Staff-requested factors "cannot reasonably be considered an impediment to competition."[24] This assertion is wholly without merit. Any action taken by the Commission Staff during the pendency of the investigation is interlocutory in nature, and does not suggest a final determination of reasonableness. In fact, the Commission was explicit in stating that the discriminatory

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[20] Ameritech Tariff F.C.C. No. 2, Transmittal No. 863, issued February 10, 1995. Excerpts of this filing are attached as Appendix A.

[21] *Id.* at Description and Justification ("D&J"), Exhibit 2, pages 1 and 8.

[22] Ameritech Tariff F.C.C. No. 2, Transmittal No. 856, issued January 6, 1995. Excerpts of this filing are attached as Appendix B.

[23] *Id.* at D&J, Exhibit 2, page 1.

[24] Bell Atlantic at 8-9.

application of loading factors that resulted in interconnection services bearing a larger proportion of overhead than competitive services would be deemed unreasonable.[25]

Recent filings by Bell Atlantic indicate that its virtual interconnection rates reflect such discriminatory pricing practices. In Transmittal No. 696,[26] Bell Atlantic established an individual case basis arrangement involving the deployment of central office multiplexers and branch office connections to a financial corporation in New Jersey. That service reflected a total rate/cost ratio of 1.19,[27] in contrast to the ratios of 1.35 and 1.23 imposed by the Commission for DS1 and DS3 interconnection services, respectively. This disparity is exacerbated by the fact that, at the request of the customer, Bell Atlantic imposed no nonrecurring charges ("NRCs"), but rather capitalized all installation, labor and case preparation fees, and recovered them through recurring charges.[28]

Similarly, in Transmittal No. 749, Bell Atlantic established discounted 2- and 4-wire service rates for its Federal Telecommunications Access Services.[29] In that filing,

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[25] MFS notes that, while the Commission and commenting parties have correctly focused on cost data, the level of demand used in the rate calculations is an equally important determinant of rate levels. As LECs begin to file their expanded interconnection performance reports with the Common Carrier Bureau, the demand data disclosed may require the Commission to revisit the LECs' rate levels at a later date.

[26] Bell Atlantic Tariff F.C.C. No. 1, Transmittal No. 696, issued September 22, 1994. Excerpts from this transmittal are attached as Appendix C.

[27] *Id.* at D&J, Workpaper 1.

[28] *Id.* at D&J, page 1.

[29] Bell Atlantic Tariff F.C.C. No. 1, Transmittal No. 749, issued February 23, 1995. Excerpts from this filing are attached as Appendix D.

Bell Atlantic demonstrates a rate/cost ratio for its 2-wire channel terminations of 1.13.[30] While Bell Atlantic does not provide cost data to support its tariffed 2- and 4-wire interconnection cross-connect rates, it is fair to assume that they match or exceed the 1.35 and 1.23 ratios established by the Commission. In light of the Commission's stated proscription of discrimination in the application of overheads, Bell Atlantic should be required to revise its rates for its virtual interconnection services to be consistent with the ratios identified above.

Bell Atlantic also argues for discriminatory nonrecurring charges for equipment installation and design and engineering, stating that the equipment employed for virtual interconnection cannot be compared to its own network equipment.[31] In light of MFS' experience -- and MFS has had more experience in obtaining expanded interconnection with Bell Atlantic than any other party -- this argument is wholly unsupported. In fact, MFS' policy in pursuing expanded interconnection is *to select channel terminating equipment that is identical to that used by the LEC in its own central offices.*[32] MFS purposely chooses this equipment to avoid the costs associated with training LEC personnel to work on unfamiliar equipment, and to ensure that the LEC personnel have the requisite experience in maintaining and repairing the equipment. In most cases, therefore, MFS' virtually interconnected equipment is -- and will continue to be -- identical to that used by Bell

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[30] *Id.* at Workpaper 1.

[31] Bell Atlantic at 5, 13.

[32] MFS applies this policy to its expanded interconnection with all LECs. MFS may depart from this policy in limited instances to respond to customer requests.

Atlantic. As a result, Bell Atlantic's claims that additional expense is incurred in designing and installing interconnectors' equipment must be rejected.

Finally, Bell Atlantic asserts that it will soon file tariff revisions that provide a discounted rate structure for interconnectors that commit to long-term arrangements.[33] MFS welcomes this development, and indeed, has petitioned the Commission to require all LECs to file such discounted rate structures for interconnection services. MFS notes, however, that the same considerations that support term discount structures for interconnection also support *volume* discount structures. MFS again urges the Commission to prescribe volume and term discounted rate structures for all LECs' virtual interconnection services that reflect the same discount levels offered to special access and switched transport customers.

C. *Southwestern Bell*

Of course, Southwestern Bell's refusal to disclose its investment and overhead loading data -- even pursuant to a nondisclosure agreement -- renders impossible any reasoned analysis of its virtual interconnection rates. MFS urges the Commission to process the pending FOIA request that MFS has filed and to release the Southwestern Bell data as soon as possible.

Even absent the cost data that the Commission has required, however, a review of Southwestern Bell's Direct Case and its recent tariff filings indicates that Southwestern Bell's virtual interconnection rates are excessive and unreasonably discriminatory. Southwestern Bell admits that it employs different annual cost factors for its

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[33] Bell Atlantic at 9.

high capacity special access services and its interconnection offerings.[34] While Southwestern Bell has not disclosed the overhead loadings used for its virtual interconnection rates, they likely are considerably higher than loadings for comparable services:[35] Southwestern Bell has tariffed some of the highest interconnection rates in the country, indicating use of high cost factors. In contrast, recent filings for competitive services contain annual cost factors that appear to be low in comparison to those used by other LECs. For example, in Transmittal No. 2268, which introduced a central office-based Network Reconfiguration Service,[36] Southwestern Bell identified a .012 overhead loading factor for maintenance, and a .172 loading factor for capital costs.[37] These loading factors are consistent with those identified in Transmittal No. 2067, which introduced Southwestern's Self-Healing Transport Network fiber-ring service.[38] That filing included maintenance loadings of .0103 and capital cost loadings of .178.[39] Because interconnectors compete

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[34] Southwestern Bell at Appendix 3.

[35] Southwestern Bell argues that only DS1 and DS3 special access services are comparable to virtual interconnection because these are the only services with tariffed cross-connects. This interpretation of comparable services is overly simplistic and restrictive, however. The list of comparable services should include all LEC services against which interconnectors may compete.

[36] Southwestern Bell, Tariff F.C.C. No. 73, Transmittal No. 2268, issued March 15, 1993. An excerpt of this filing is attached as Appendix E.

[37] Id. at D&J, Appendix A, page 7.

[38] Southwestern Bell, Tariff F.C.C. No. 68, Transmittal No. 2067, issued January 30, 1991. An excerpt of this filing is attached as Appendix F.

[39] Id. at D&J, Section 3.4, Workpaper 3, page 64.

directly against these Southwestern Bell services, the LEC should not be permitted to impose upon interconnectors loading factors in excess of those identified above.

In addition, Southwestern Bell admits that it employed "averaged" overhead loadings in establishing the nonrecurring charges associated with its virtual interconnection service.[40/] Because the Commission has rejected the use of such averaged loadings, it should order Southwestern Bell to pay refunds -- with interest -- for all excessive NRCs collected from MFS and other interconnectors.

Finally, Southwestern Bell's purported comparison between priceouts of a "typical" MegaLink service and a comparable interconnection arrangement[41/] does not merit serious consideration. In its attempt to make the MegaLink service appear more expensive than interconnection, Southwestern Bell understated the costs of interconnection by excluding the cross-connect charges, and grossly overstated the costs of MegaLink by including the costs of the local loop transmission plant and the terminating equipment at the customer premises. The comparison is therefore inapt.

D. U S West

While most LECs admit that their high capacity DS1 and DS3 services are comparable to their virtual interconnection services for purposes of the Commission's analysis, U S West has taken the most extreme position, stating that none of its tariffed services is comparable to interconnection.[42/] Of course, U S West takes this position

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40/ Southwestern Bell at 2.

41/ Southwestern Bell at 6.

42/ U S West at 4.

because such a conclusion by the Commission effectively would eliminate its ability to judge whether U S West's interconnection rates were reasonable.

For purposes of responding to the *Designation Order*, U S West assumes that its DS1 and DS3 channel terminations for single circuits taken on a month-to-month basis may be comparable to virtual collocation, and U S West provides investment and overhead data for these services. This is hardly a concession, however -- U S West has provided extremely limited data that does not respond to the *Designation Order*'s requirements, and that grossly overstate the actual cost of interconnection.

Specifically, U S West has refused to provide data concerning its Self-Healing Alternate Route Protection ("SHARP") service and its DS1 and DS3 services offered through volume and term discounted rate structures. Such data would demonstrate that U S West's rates for virtual interconnection are excessive. U S West argues that SHARP service is not comparable due to "different service provisioning configurations,"[43] but neglects to elaborate. In fact, SHARP services may be the closest analogy to virtual interconnection arrangements because U S West introduced the SHARP service in 1990 in order to compete directly with the fiber ring networks that competitive CAPs had begun to construct in its operating territory. Like the services provided over CAP networks, SHARP services are provisioned over fully redundant and diverse fiber ring facilities. Because the focus of the Commission's inquiry into interconnection costs focuses on discrimination in favor of a narrowly defined group of large customers, and against interconnectors, SHARP services must be considered comparable.

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[43] U S West at 4.

SHARP rates have been incorporated into U S West's Price Cap rate structure for several years now, and no recent detailed cost data are available. When the service was introduced in 1990, however, the cost data provided by U S West clearly demonstrated that the introductory SHARP rates reflected lower rate/cost ratios than U S West's virtual interconnection rates. For example, U S West's Direct Case shows a rate/cost ratio of 1.40 for DS1 interconnection cross-connects.[44] In contrast, U S West identified a rate/cost ratio of 1.07 for its SHARP DS1 channel terminations taken on a month-to-month basis.[45]

Similarly, a review of cost data filed with U S West's discounted high capacity services demonstrates that the failure to take volume and term discounted rates into account results in excessive charges for virtual interconnection. In 1991, U S West introduced a discounted rate structure for customers that took up to 36 DS3 circuits for term commitments of up to 10 years.[46] The cost support materials demonstrate that U S West accords much preferable treatment to customers of its discounted DS3 service than to interconnectors. U S West's discounted DS3 filing employs significantly lower annual cost factors for maintenance, depreciation, and administrative overheads for its DS3 service than for its

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[44] *Compare* U S West Workpaper TRP1TOT.XLS, showing a DS1 cross-connect monthly unit cost of $12.28 *with* $17.22 (U S West's currently effective DS1 cross-connect rate from U S West Tariff F.C.C. No. 5, § 21.8.4). Note that this analysis compares U S West's costs with the cross-connect rate that has been substantially reduced by Commission order. The DS1 cross-connect rate tariffed by U S West before the Commission-ordered rate adjustment factor was $21.00, which would have resulted in a rate/cost ratio of 1.71.

[45] U S West Tariff F.C.C. No. 1, Transmittal No. 80, issued June 4, 1990, at Section 3.3, Workpaper 1, page 1. Significantly, the ratios for SHARP channel terminations taken for long-term commitments are lower, with the longest term rates falling below U S West's identified costs. MFS attaches the relevant pages from the SHARP cost support as Appendix G.

[46] U S West Tariff F.C.C. No. 1, Transmittal No. 222, issued December 31, 1991.

expanded interconnection service.[47] As a result of this disparate application of overheads, U S West identified monthly unit costs for its discounted DS3 service as low as $23.53, compared with monthly unit costs of $43.49 for its DS3 cross-connect rate element.[48] It therefore appears that applying the same ratemaking practices to both discounted high capacity services and virtual interconnection would yield significant reductions in the rates for expanded interconnection.

Finally, U S West also argues that switched transport is not comparable to virtual interconnection, and has neglected to provide cost data regarding that service. A recent tariff filing by U S West suggests that such data may support lower interconnection rates. In February of this year, U S West restructured its switched transport rates to include monthly rates for entrance facilities with an optical interface.[49] That filing established monthly charges for optical entrance facilities that were 30% below monthly charges for

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[47] A comparison of the cost data provided in U S West's direct case for EICT interconnection service, and the data provided in support of its volume and term discounted DS3 channel termination rates yields the following comparison:

	EICT	DS3
Depreciation	0.1080	0.1061
Maintenance	0.0214	0.0151
Administration	0.0227	0.0139

Compare U S West Direct Case at Workpaper TRP3TOT.XLS *with* U S West Tariff F.C.C. No. 1, Transmittal No. 222, issued December 31, 1991, D&J, Section 2, Workpaper 1. MFS attaches the Workpaper from Transmittal No. 222 as Appendix H.

[48] *Compare* U S West Transmittal No. 222, D&J Section 2, Workpaper 1, page 14 *with* Direct Case Workpaper TRP3TOT.XLS.

[49] U S West Tariff F.C.C. No. 5, Transmittal No. 589, issued February 1, 1995.

entrance facilities with an electrical interface. U S West did not provide cost data for that service. Because LEC services with an optical interface are similar to fiber-based virtual interconnection services, however, the cost data associated with the new optical entrance facility service may support further reductions in U S West's virtual interconnection rates.

In light of the publicly-available data discussed above -- and U S West's refusal to provide more current data on comparable services -- the Commission should prescribe rates for virtual interconnection that are consistent with U S West's comparable competitive services. Specifically, the Commission should prescribe rate/cost ratios for virtual collocation that do not exceed 1.07, and should prescribe a volume and term discounted rate structure for virtual collocation services using the same loading factors employed for U S West's DS3 services.

3. *LEC Attempts to Exclude Promotional Offerings From the Definition of "Comparable" Services Unreasonably Inflate the Cost of Interconnection and Must Be Rejected*

The LEC Direct Cases include a wide variety of responses regarding whether promotional offerings should not be considered "comparable" to virtual collocation services for purposes of the instant investigation. Bell Atlantic and United/Centel flatly state that promotional offerings are not comparable to virtual collocation, stating that it would be inappropriate to base permanent rate levels on short-term promotions.[50] U S West makes a similar argument, but notes that when promotions involve the waiver of NRCs, it may be

[50] Bell Atlantic at 1; United/Centel at 2.

reasonable to extend them to virtual interconnection.[51] Cincinnati Bell takes no position on the issue; while GTE argues that promotional offerings should be treated as comparable services.[52]

In fact, most of the promotional offerings filed recently by LECs do not establish temporary discounted rates, but rather waive NRCs for the installation of new services.[53] MFS agrees with U S West that, when such promotions are offered by the LECs to their special access or switched transport customers, they should also be offered to interconnected parties. MFS notes, however, that the extension of such promotions must not be left to the discretion of the LECs -- while U S West notes that the NRC waiver promotion it introduced in Transmittal No. 411 was extended to interconnectors, it does not note that when the promotion was filed in 1993, U S West did not *have* any interconnectors.

Nondiscriminatory application of NRC waivers is required by the antidiscrimination provisions of the Communications Act, by competitive equity and by the Commission's expanded interconnection rules. In establishing its rules governing expanded interconnection for special access services, the Commission noted that LECs could use NRCs to disadvantage collocated competitors, and explicitly proscribed discrimination in the application of such charges: "We conclude that nonrecurring reconfiguration charges must be applied in a neutral manner that does not differentiate based on whether the customer

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[51] U S West at 2-3.

[52] Cincinnati Bell at 1; GTE at 2.

[53] *E.g.*, Ameritech Tariff F.C.C. No. 1, Transmittal No. 857, issued January 9, 1995; U S West Tariff F.C.C. No. 1, Transmittal No. 196, issued September 30, 1991. Both of these promotions waived nonrecurring installation charges for selected high capacity special access services for 90-day periods.